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PORT CHESTER NY 10573

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Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.79	05/02/2014

Sent To: 181 WESTCHESTER AV  
Street, Apt. No.: SUITE 500C Port Chester  
City, State, ZIP: NY 10573 GARY MICHAEL KAVULICH

PS Form 3000, August 2006

See Reverse for Instructions

Index Number: CV-089896-08/BX



**NOTICE OF MOTION**

the annexed affidavit of **ABDOU GAYE**

, 2014 , and the exhibits annexed thereto,

DEFENDANT will move this court located at

851 Grand Concourse, Bronx, New York 10451 Part 34, 5th Floor, Room 503 , on the 21ST , day of MAY , 2014 , at 9:30 am , or as soon thereafter as can be heard for an Order :

RESTORE TO THE TRIAL CALENDAR FOR THE PURPOSE OF COLLECTING ON A VACATED DEFAULT JUDGMENT \_

and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that ( check the applicable box below):

- Appearances are required on the return date of the motion by the moving party. The non moving party(ies) should also attend to interpose any response.
- these papers have been served on you at least eight days before the motion is scheduled to be heard. You must serve your answering papers, if any, at least two days before such time upon the movant.
- these papers have been served on you at least twelve days before the motion is scheduled to be heard. You must serve your answering papers, if any, at least seven days before such time upon the movant.

**MAIL TO:**

Gary Michael Kavulich (Counsel for Pltf)  
181 Westchester Avenue  
Suite 500C  
Port Chester, New York 10573

All answering papers to the Court are to be filed on the return date of the motion with the Clerk in the Part listed above.

May 2, 2014

From: ABDOU GAYE  
825 E. 170TH STREET  
APT. 4B  
BRONX, New York 10459

572114  
Defendant as Plaintiff.  
Plaintiff indicated that he  
received the amount requested  
earlier this month.

*Eddy J. McShane*  
**HON. EDDIE J. McSHANE**

the City of New York  
Bronx

Index Number: CV-089896-08/BX



PROSPECT REALTY  
Plaintiff(s)

AFFIDAVIT IN SUPPORT OF  
NOTICE OF MOTION

-against-  
ABDOU GAYE

Defendant(s)

ABDOU GAYE, being duly sworn, states that I would like to obtain the following relief from the

Court: RESTORE TO THE TRIAL CALENDAR FOR THE PURPOSE OF COLLECTING ON A  
VACATED DEFAULT JUDGMENT -

ORDER TO RETURN \$2,000

The basis for my request is: COLLECTED

1363 PROSPECT AV LAS TIM WAS DESNIE

4/14/2014 NG ~~for~~ FURTHER DETAIL

12/17/2013 RETURN \$700

IN MAX DEB

WHEREFORE, THE UNDERSIGNED RESPECTFULLY REQUESTS THE WITHIN MOTION  
BE GRANTED.

Sworn to before me this MAY 30 2014.

Abdou Gaye

Signature of Movant

Notary Public/ Court Employee

PSCC

of the City of New York

BRONX

Part 34

45 Prospect Realty

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Abdou Gaye

Defendant(s)/Respondent(s)

Index Number 89846/08

Motion Cal. # Motion Seq. #

File # 38600

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed.....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to Vacatedefault judgment entered 4/30/09 is as follows:Defendant's motion is granted on consent?  
The judgment is hereby vacated. All  
Liens, Restraints are lifted effective  
immediately.Defendant's Proposed Answer is  
deemed served upon Plaintiff in courtThis matter adjourned to Thursday, February  
6, 2014 @ 9:30 am, Room 503 for trial.This constitutes the decision/order of  
this Court.

12/17/13 Date	Civil Court of the City of New York DEC 17 2013 ENTERED BRONX COUNTY	Judge, Civil Court ELIZABETH A. TAYLOR JUDGE, CIVIL COURT
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CIVIL COURT OF THE CITY OF NEW YORK  
County of Bronx Part II

Index No. 89896/08

File #  
3860

**STIPULATION  
OF SETTLEMENT**

543-45 PROSPECT Realty

Plaintiff(s),

-against-

ABDOU Gaye Defendant(s).

It is hereby stipulated and agreed by and between the parties that the above-referenced action is settled as follows:

This proceeding is discontinued

Civil Court of the City of New York	
APR 14 2014	
ENTERED BRONX COUNTY	

Signature

Date

Signature

Date

Signature

Date

Signature

Date

ork, County of Bronx  
of the City of New York Civil Part

Index No: CV-089896-08/BX

S PROSPECT REALTY

-against-

EDOU GAYE

Plaintiff(s)

Defendant(s)

### AFFIDAVIT OF SERVICE of a Notice of Motion

State of New York, County of \_\_\_\_\_ ss.:

(Name of Person serving papers), being duly sworn, deposes and says:

I am over the age of 18 and not a party to this action.

At \_\_\_\_\_, on \_\_\_\_\_, I served a Notice of Motion on:

(Time)

(Date)

(Name of Individual Person served)

 Actual person to be served Person of suitable age and discretion

OR

for

(Name of Authorized Person to accept service)

(Name of Business or Entity)

Address of Person Served \_\_\_\_\_

(Actual address on papers to be served)

Location of Person Served \_\_\_\_\_

(If different than address indicated on papers to be served)

 By Personal Delivery

OR

 Mail (Check all that apply)

Description of person served:

Sex:

Color of Skin: \_\_\_\_\_

 Certified Mail # \_\_\_\_\_

Height: \_\_\_\_\_

Weight: \_\_\_\_\_

 Registered Mail # \_\_\_\_\_

Hair Color: \_\_\_\_\_

Eye Color: \_\_\_\_\_

 Return Receipt Requested

Build: \_\_\_\_\_

Age: \_\_\_\_\_

 First Class Mail First Class Mail with Certificate of Mailing # \_\_\_\_\_

Signature of Server

(Must be signed before Notary or Court Employee)

Sworn to before me on \_\_\_\_\_, 20 \_\_\_\_\_.  
  
(Signature of Notary Public or Court Employee)

CIVIL COURT OF THE CITY OF NEW YORK  
County of Bronx Part 11

Index No. 89896/08

File #  
3860

343-45 Prospect Realty

Plaintiff(s),

-against-

ABDOL GAYE Defendant(s).

STIPULATION  
OF SETTLEMENT

It is hereby stipulated and agreed by and between the parties that the above-referenced action is settled as follows:

This proceeding is discontinued

Civil Court  
of the  
City of New York

APR 14 2014

ENTERED  
BRONX COUNTY

Signature

Date

Signature

Date

Signature

Date

Signature

Date

Page \_\_\_\_\_ of \_\_\_\_\_



## CIVIL COURT OF THE CITY OF NEW YORK

Civil Court: 851 Grand Concourse, Bronx, NY 10451  
 Housing Court: 1118 Grand Concourse, Bronx, NY 10456

## INTERPRETER REQUEST FORM & SCHEDULE

Scan/email this form ONLY to Esteban Bujanda or deliver to L&T Interpreter mezzanine area. Print Legibly.  
*Submit even if an Interpreter is already scheduled for the date(s) sought.*

- 1) Language-specific dates are activated only when a written request has been submitted.
- 2) Requests must be submitted at least 72 hours/3 business days in advance (not counting submission or appearance date).
- 3) For languages not listed you must call the Interpreters Office at 718 466 3003.
- 4) Use for ALL languages including Spanish trials.

Language(s) Wolof Assignment date(s) 3/12/14  
 Bench Trial  Conference  Hearing  Inquest  Jury Trial  Motion

## Check language(s)

Albanian  Cantonese  Greek  Japanese  Polish  Spanish Trial  
2<sup>nd</sup> WED 1<sup>st</sup> MON

Arabic  Croatian  Gujarati  Khmer/Cambodian  Portuguese  Thai  
1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> WEDNESDAYS

Armenian  Farsi  Haitian Creole  Korean  Punjabi  Twi  
2<sup>nd</sup> MON 1<sup>st</sup> TUE

ASL  French  Hebrew/Yiddish  Mandarin  Russian  Urdu  
Call x63003 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> WEDNESDAYS 3<sup>rd</sup> TUE

Bambara  Fulani  Hindi  Mandingo  Serbian  Vietnamese  
1<sup>st</sup> pay WED 1<sup>st</sup> TUE 3<sup>rd</sup> TUE

Bengali  German  Italian  Mixteco  Soninke  Wolof  
1<sup>st</sup> or 3<sup>rd</sup> MON 1<sup>st</sup> TUE 1<sup>st</sup> pay WED

Other \_\_\_\_\_

Interpreter use only  ADBM \_\_\_\_\_ Book \_\_\_\_\_ ECourts \_\_\_\_\_  
 Index # 89896/68 Caption 1343 Prospect Reality v. Gaye

Time 9:30 AM Part/Room 11 / 503 Location (circle one): L&T / Civil

Requested by Edward Farrelly SEC Today's date 2/25/14  
Print Name & Title

Civil Court of the City of New York  
 County of Bronx  
 Part 34

1343-45 Prospect Realty

Claimant(s)/Plaintiff(s)/Petitioner(s)

Abdou Gaye

Defendant(s)/Respondent(s)

Index Number 89896/08  
 Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

File # 3860

### DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers  
 considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed.....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to Vacate

default judgment entered 4/30/09 is as follows:  
Defendant's motion is granted on consent  
The judgment is hereby vacated. All  
Liens, Restraints are lifted effective  
immediately.

Defendant's proposed Answer is  
deemed served upon Plaintiff in court

This matter adjourned to Thursday, February  
6, 2014 @ 9:30 am, Room 503 for trial.

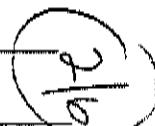
This constitutes the Decision/Order of  
this Court.

12/17/13  
 Date

Civil Court of the City of New York DEC 17 2013
ENTERED BRONX COUNTY

Judge, Civil Court

ELIZABETH A. TAYLOR  
JUDGE, CIVIL COURT



Civil Court of the City of New York  
County of Bronx

Index No: CV-089896-08/BX



1343-45 PROSPECT REALTY  
-against-  
ABDOU GAYE

**ANSWER IN WRITING**  
**CONSUMER CREDIT TRANSACTION**  
**ACTION FOR MONEY ONLY**

Defendant, ABDOU GAYE, at 825 E. 170TH STREET, APT. 4B, BRONX, New York 10459 answers the Complaint as follows:

*Check all that apply*

- 1  General Denial: I deny the allegations in the complaint  
**SERVICE**
- 2  I did not receive a copy of the summons and complaint
- 3  I received the Summons and Complaint, but service was not correct as required by law.  
**DEFENSES**
- 4  I do not owe this debt
- 5  I did not incur this debt. I am the victim of identity theft or mistaken identity. DEC 17 2013
- 6  I have paid all or part of the alleged debt.
- 7  I dispute the amount of the debt.
- 8  I do not have a business relationship with Plaintiff. ( Plaintiff lacks standing.)
- 9  The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.
- 10  Plaintiff does not allege a debt collection license number in the Complaint.
- 11  Statute of Limitations ( the time has passed to sue on this debt: more than six years.)
- 12  The debt has been discharged in bankruptcy.
- 13  The collateral (property) was not sold at a commercially reasonable price.
- 14  Unjust enrichment (the amount demanded is excessive compared with the original debt.)
- 15  Violation of the duty of good faith and fair dealing. NO
- 16  Unconscionability (the contract is unfair.) NO
- 17  Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)
- 18  Defendant is in the military. NO
- 19  Other: \_\_\_\_\_

**OTHER**

- 20  Please take notice that my only source of income is 8/5/2013 which is exempt from collection.

**COUNTERCLAIM**

- 21 Counterclaim(s):\$ \_\_\_\_\_ Reason: T

**VERIFICATION**

State of New York, County of Bronx ss:

ABDOU GAYE, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true

Sworn to before me this SEP 3<sup>0</sup> 2013 day of 20

Notary Public /Court Employee and Title

Abdou Gaye  
Defendant

*4/13/13*  
Civil Court of the City of New York  
County of Bronx Part 39

## Appearances are Mandatory

Index Number: CV-089896-08/BX

343-45 PROSPECT REALTY  
-against-

ABDOU GAYE

2013 SEP 30 PM/12:58

## ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

UPON the annexed affidavit of ABDOU GAYE, sworn to on September 30, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court

851 Grand Concourse

Bronx, New York 10451

Part 34 Room 503

on 10/10 at 9:30 AM 10/10/13

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s):

(Judge to Initial)

Sheriff or Marshal:

(Judge to Initial)

*C* by Personal Service by "In Hand Delivery"*C* by Certified Mail, Return Receipt Requested*C* by First Class Mail with official Post Office Certificate of Mailing*C* by Personal Service by "In Hand Delivery"*C* by Certified Mail, Return Receipt Requested*C* by First Class Mail with official Post Office Certificate of Mailing

on or before 10/1/13, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

## Mail to Attorney or party:

Gary Michael Kavulich (Counsel for Pltf),  
181 Westchester Avenue, Suite 500C,  
Port Chester, New York 10573

## Sheriff/Marshall:

NYC Marshal  
Biegel, Stephen, Marshal  
109 W 38 Street  
Suite 200  
New York, NY 10018-3615

September 30, 2013

DATE

Hon. Joseph E. Capella, Civil Court Judge (NYC)

*MCC JK*

art of the City of New York, County of Bronx

Index # CV-089896-08/BX

-45 PROSPECT REALTY  
-against-  
ABDOU GAYE

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

State of New York, County of New York:

ABDOU GAYE, being duly sworn, deposes and says:  
(Defendant's initials)

1. G A a) I am the Party named as (Defendant)(Respondent) in the above titled action ~~I AM NOT THE PARTY~~
2. G A a) I have been served with a summons and complaint in this action. [NOTE: if Small Claims skip #3, and go to # 4]  
       b) I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b,  
       skip #3, #4, #5, and go to #6]  
       a Notice of Default Judgment mailed to me  
       a Restraining Notice on my bank account.  
A T G c) a copy of an Income Execution served on ~~1/1/2012~~ ~~I AM NOT~~  
       Other:
3. G A a) I did not appear and answer in the Clerk's Office because:[NOTE: if you complete # 3a, skip and go to #6].  
       b) I did not appear and answer in the Clerk's Office  
       and I received a date for trial.  
       but the answer was entered late  
       Other: DRIVERS LICENSE IN MY SOCIAL SECURITY
4. On the Date of Trial before Judge/Arbitrator  
       a stipulation(a written agreement) was made between claimant/plaintiff and defendant.  
       a judgment was entered after the trial.  
       a judgment was entered against me by default for my failure to appear.  
       Other:
5. My reason for not  
G A complying with the stipulation is NONE  
G A following the order of the Court is \_\_\_\_\_  
       appearing in court on the date scheduled for trial is \_\_\_\_\_  
       Other:
6. I allege that I have a good defense because: I HAVE MY INCOME COPY
7. G A a) I have not had a previous Order to Show Cause regarding this index number.  
G A b) I have had a previous Order to Show Cause regarding this index number but I am making this application because: None
8.        I request that the Judgment be vacated, that the case be restored to the calendar, that the answer be deemed timely filed and permission to serve these papers in person.

Sworn to before me this day September 30, 2013

                          
 Signature of Court Employee and Title  
 (Sign Name) Abdou GAYE  
 ABDOU GAYE  
 825 E. 170TH STREET  
 APT. 4B  
 BRONX, New York 10459

Bronx County Civil Court  
Civil Judgment

Plaintiff(s):  
1343-45 PROSPECT REALTY

vs.

Defendant(s):  
ABDOU GAYE

Index Number: CV-089896-08/BX

Judgment issued: On Default

On Motion of:

Kavulich, Gary Michael  
30 Church St Ste 26, New Rochelle, NY  
10801-

Amount claimed	\$2,900.00	Cost By Statute	\$20.00	Transcript Fee	\$0.00
Less Payments made	\$0.00	Index Number Fee	\$45.00	County Clerk Fee	\$0.00
Less Counterclaim Offset	\$0.00	Service Fee	\$25.00	Enforcement Fee	\$40.00
Interest 09/01/2002 at 9%	\$1,739.77	Non Military	\$0.00	Other Disbursements	\$0.00
Attorney fees	\$0.00	Notice of Trial	\$0.00	Other Costs	\$0.00
		Jury Demand	\$0.00		
Total Damages	\$4,639.77	Total Costs & Disbursements	\$130.00	Judgment Total	\$4,769.77

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 1343-45 PROSPECT REALTY  
1343 PROSPECT AVENUE, BRONX, NY 10459-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) ABDOU GAYE  
825 E. 170TH STREET, APT. 4B, BRONX, NY 10459-

Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK  
in the total amount of \$4,769.77 on 04/30/2009 at 04:30 PM.

Judgment sequence 1

Jack Baer, Chief Clerk Civil Court

Realty,  
PLAINTIFF(S)  
AGAINST-

Abdou Gaye

INDEX NO. 89896/08

FILE NO. 3860  
JUDGMENT

1343 Prospect Avenue  
Bronx, NY 10459

DEFENDANT(S)

AMOUNT CLAIMED LESS PMTS ON ACCT.	\$2,900.00
INTEREST FROM 9/1/2002	<u>\$1,685.63</u>
	\$4,585.63
COSTS BY STATUTE	\$20.00
SERVICE OF SUMMONS AND COMPLAINT	\$25.00
FILING OF SUMMONS AND COMPLAINT	\$45.00
PROSPECTIVE MARSHALL'S FEE	\$40.00
NOTICE OF INQUEST	\$0.00
TRANSCRIPT & DOCKETING	\$0.00
	<u>\$130.00</u>
	TOTAL \$4,715.63

STATE OF NEW YORK, COUNTY OF WESTCHESTER:

THE UNDERSIGNED, ATTORNEY AT LAW OF THE STATE OF NEW YORK, ON OF THE ATTORNEY(S) OF RECORD FOR THE PLAINTIFF(S) IN THE ABOVE ENTITLED ACTION, STATES THAT THE DISBURSEMENTS ABOVE SPECIFIED HAVE BEEN OR WILL NECESSARILY BE MADE OR INCURRED THEREIN AND ARE REASONABLE IN AMOUNT: UPON FAILURE TO ANSWER, THE TIME OF THE DEFENDANT TO APPEAR AND ANSWER HEREIN HAS EXPIRED AND THE SAID DEFENDANT HAS NOT APPEARED AND ANSWERED HEREIN. THE UNDERSIGNED AFFIRMS THIS STATEMENT TO BE TRUE UNDER THE PENALTIES OF PERJURY.

DATED: WESTCHESTER, NY  
4/16/2009

KAVULICH & ASSOCIATES, P.C.  
BY: GARY KAVULICH, ESQ.  
30 CHURCH STREET, SUITE 26  
NEW ROCHELLE, NY 10801

JUDGMENT ENTERED ON  
SERVICE OF SUMMONS AND COMPLAINT IN THIS ACTION ON THE DEFENDANT(S)  
HEREIN HAVING BEEN COMPLETED ON 12/9/2008 WITHIN THE CITY OF NEW YORK ON THAT DAY AND MORE THAN 20 DAYS

HAVING ELAPSED.

BY FILING ON SAID DAY OF PROOF OF THE SERVICE THEREOF BY SUBSTITUED SERVICE ON DEFENDANT(S) AND MORE THAN 30 DAYS HAVING ELAPSED SINCE THE DAY OF COMPLETION OF SERVICE AND THE TIME OF SAID DEFENDANT(S) TO APPEAR AND ANSWER HAVING EXPIRED, AND

NOW ON MOTION OF KAVULICH & ASSOCIATES, P.C. ATTORNEY(S) FOR THE PLAINTIFF(S) IT IS, ADJUDGED THAT

1343-45 Prospect Realty

RESIDING AT: 1343 Prospect Avenue Bronx, NY 10459

RECOVER OF Abdou Gaye

RESIDING AT: 825 E. 170th Street Apt. 4B Bronx, NY 10459-1331

THE SUM OF \$2,900.00 WITH INTEREST OF \$1,685.63 MAKING A TOTAL OF \$4,585.63 TOGETHER WITH \$130.00 COSTS AND DISBURSEMENTS, AMOUNTING IN ALL TO THE SUM OF \$4,715.63 AND THAT PLAINTIFF HAVE EXECUTION THEREFORE. SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED.

CLERK

THE CITY OF NEW YORK

NY

A Realty,

PLAINTIFF(S)

AGAINST

d Gaye

DEFENDANT(S)

AFFIDAVIT OF FACTS  
CONSTITUTING THE CLAIM  
THE DEFAULT AND THE  
AMOUNT DUE

STATE OF NEW YORK COUNTY OF WESTCHESTER

SS: GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PERJURY, THAT DEFONENT IS THE ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUTED SERVICE OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

September, 2002 \$725.00

October, 2002 \$725.00

November, 2002 \$725.00

December, 2002 \$725.00

AT THE AGREED MONTHLY RENTAL OF \$725.00

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY AND RESIDES WITHIN THE CITY OF NEW YORK. RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF, A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED.

WHEREFORE DEFONENT DEMANDS JUDGMENT AGAINST DEFENDANT(S) FOR \$2,900.00 WITH INTEREST FROM 9/1/2002 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACTION.

KAVULICH & ASSOCIATES, P.C.  
BY: GARY KAVULICH, ESQ.  
30 CHURCH STREET, SUITE 26  
NEW ROCHELLE, NY 10801

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COURT ON

DATED: WESTCHESTER, NY

4/16/2009

YOURS, ETC.,

ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF SS:  
BEING DULY SWORN, DEPOSES AND SAYS; THAT DEFONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

THAT ON DEFONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF (EACH OF) THE FOLLOWING NAMED DEFENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

BY DEPOSITING SAME ENCLOSED IN POSTPAID PROPERLY ADDRESSED WRAPPER(S), IN -A POST OFFICE- OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW YORK STATE.

SWORN TO BEFORE ME ON

THE CITY OF NEW YORK  
ONX

ect Realty,

INDEX NO. 89896/08

PLAINTIFF(S)

AFFIDAVIT OF  
MAILING OF ADDITIONAL  
NOTICE OF SUIT

-AGAINST-

Abdou Gaye

DEFENDANT(S)

STATE OF NEW YORK)  
COUNTY OF WESTCHESTER) SS:

GARY KAVULICH, ESQ., BEING DULY SWORN HEREBY DEPOSES AND SAYS:

1. I AM THE ATTORNEY FOR THE PLAINTIFF(S) HEREIN.
2. THE ABOVE ENTITLED ACTION IS AGAINST A NATURAL PERSON AND IS BASED UPON NON PAYMENT OF A CONTRACTUAL OBLIGATION.
3. ON 11/7/2008, I MAILED A COPY OF THE SUMMONS AND COMPLAINT IN THE ABOVE ENTITLED ACTION BY DEPOSITING THE ENVELOPE(S) IN AN OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE U.S. POSTAL SERVICE WITHIN NEW YORK STATE. SAID MAILING WAS BY FIRST CLASS MAIL IN A POSTPAID ENVELOPE(S), PROPERLY ADDRESSED TO THE DEFENDANT(S). THE ENVELOPE(S) BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE(S) THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT. AT DEFENDANT(S):

LAST KNOWN ADDRESS AT: Abdou Gaye: 825 E. 170th Street Apt. 4B Bronx, NY 10459-1331

-----PLACE OF EMPLOYMENT AT:

THE ENVELOPE BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT.

-----A KNOWN ADDRESS OF THE DEFENDANT AT:

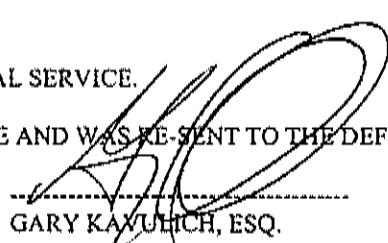
THIS ADDRESS IS NOT THE RESIDENCE OR PLACE OF EMPLOYMENT OF THE DEFENDANT.

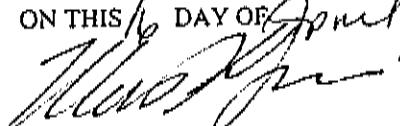
THE AFOREMENTIONED MAILING:

HAS NOT BEEN RETURNED UNDELIVERABLE BY POSTAL SERVICE.

-----WAS RETURNED UNDELIVERABLE BY POSTAL SERVICE AND WAS RE-SENT TO THE DEFENDANT AT:

SWORN TO BEFORE ME  
ON THIS 16 DAY OF April, 2009

  
GARY KAVULICH, ESQ.

  
Matthew N. Kaufman  
Notary Public - State of New York  
No: 02KA6204092  
Qualified in Westchester County  
My Commission Expires - April 13, 2013

THE CITY OF NEW YORK  
ONX

Prospect Realty.

PLAINTIFF,

-AGAINST-

Edou Gaye.

DEFENDANT(S)

INDEX NO:  
FILE NO: 3860

AFFIRMATION OF FACTS  
CONSTITUTING THE  
AMOUNT DUE

X

*Hyser Mehmetoglu*

hereby deposes and says under the penalties of perjury, ss:

That deponent is the managing agent of 1343-45 Prospect Realty, Plaintiff in the within action; this action was commenced by substituted service of the summons and complaint upon defendant(s) and is an action for breach of a lease agreement in the amount of \$2900.00 for the months of

September, 2002 through and including December, 2002 at the agreed monthly rental amount of \$725.00 per month; (after application of security and after application of payments) no part having been paid, although duly demanded. All other causes of action are hereby waived and disposed of. After a complete and thorough investigation, as I have been informed by Plaintiff's counsel, the defendant(s) is/are found not to be in the military and reside(s) in the City of New York. Rent was not paid by any other source. I make this affirmation upon personal Knowledge.

WHEREFORE, Plaintiff demands judgment against defendant for \$2900.00 with interest from August 1, 2002 together with costs and disbursements of the action.

Dated: 9/4/2008

Sworn to before me  
on this 10 day of Sept, 2008

Notary Public

FRANK G. BUGLIONE  
Notary Public State of New York  
#N-100000000000000000  
Commission Expires January 21, 2003  
*2001*

*Hyser Mehmetoglu*  
*Hyser Mehmetoglu*

AT OF THE CITY OF NEW YORK  
OF BRONX

5 Prospect Realty,

Index No. 89896/08  
File No. 3860

Plaintiff,

-against-

**AFFIDAVIT OF  
INVESTIGATOR**

Abdou Gaye

Defendant(s).

STATE OF NEW YORK )  
                        )SS.:  
COUNTY OF WESTCHESTER )

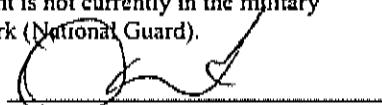
I am over 18 years of age, am not a party to this action and reside in Westchester County,  
State of New York.

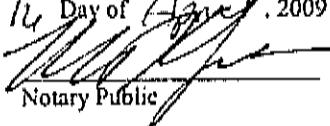
I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make  
an investigation to ascertain if the Defendant(s) Abdou Gaye is at the present  
time in military service for the purpose of entry of judgment.

On April 16, 2009, I Denise Miranda, contacted the Defense manpower Data Center  
concerning the Defendant Abdou Gaye military status.

I inputted the social security number, as provided by the Defendant, into the Defense  
Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense  
Manpower Data Center stating that the said Defendant is not currently in the military  
service of the United States and the State of New York (National Guard).

  
Denise Miranda

Sworn to before me this  
16 Day of April, 2009  
  
Notary Public

Matthew N. Kaufman  
Notary Public - State of New York  
No: 02KA6204092  
Qualified in Westchester County  
My Commission Expires - April 13, 2013

STATE OF THE CITY OF NEW YORK  
OF BRONX

S Prospect Realty,

Plaintiff,

Index No. 89896/08  
File No. 3860

-against-

AFFIDAVIT OF  
INVESTIGATOR

Abdou Gaye

Defendant(s).

STATE OF NEW YORK )  
                        )SS.:  
COUNTY OF WESTCHESTER )

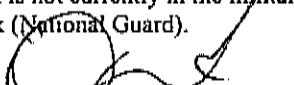
I am over 18 years of age, am not a party to this action and reside in Westchester County, State of New York.

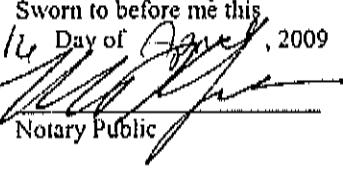
I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make an investigation to ascertain if the Defendant(s) Abdou Gaye is at the present time in military service for the purpose of entry of judgment.

On April 16, 2009, I Denise Miranda, contacted the Defense manpower Date Center concerning the Defendant Abdou Gaye military status.

I inputted the social security number, as provided by the Defendant, into the Defense Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not currently in the military service of the United States and the State of New York (National Guard).

  
Denise Miranda

Sworn to before me this  
16 Day of April, 2009  
  
Notary Public

Matthew N. Kaufman  
Notary Public - State of New York  
No: 02KA6204092  
Qualified in Westchester County  
My Commission Expires - April 13, 2013

Military Status

Page 1 of 1

Department of Defense Manpower Data Center

APR-16-2009 11:41:36



Military Status Report  
Pursuant to the Servicemembers Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
GAYE	ABDOU		Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.	

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

*Mary M. Snavely-Dixon*

Mary M. Snavely-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. §§ 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenselink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person ( e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>

**WARNING:** This certificate was provided based on a name and Social Security number (SSN) provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:FIWNBTIWPZ

CITY OF NEW YORK

al<sup>y</sup>,  
PLAINTIFF(S)  
AGAINST

AFFIDAVIT OF FACTS  
CONSTITUTING THE CLAIM  
THE DEFAULT AND THE  
AMOUNT DUE

DEFENDANT(S)

STATE OF NEW YORK COUNTY OF WESTCHESTER

GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PERJURY, THAT DEPONENT IS THE ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUTED SERVICE OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

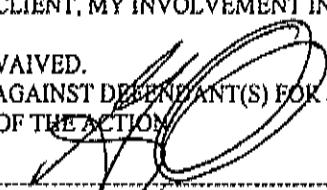
September, 2002 \$725.00  
October, 2002 \$725.00  
November, 2002 \$725.00  
December, 2002 \$725.00

AT THE AGREED MONTHLY RENTAL OF \$725.00

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY AND RESIDES WITHIN THE CITY OF NEW YORK. RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF, A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED.

WHEREFORE DEPONENT DEMANDS JUDGMENT AGAINST DEFENDANT(S) FOR \$2,900.00 WITH INTEREST FROM 1/2002 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACTION.

  
KAVULICH & ASSOCIATES, P.C.  
BY: GARY KAVULICH, ESQ.  
30 CHURCH STREET, SUITE 26  
NEW ROCHELLE, NY 10801

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COURT ON

SERVED: WESTCHESTER, NY  
4/16/2009

YOURS, ETC.,  
ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF SS:  
SING DULY SWORN, DEPOSES AND SAYS; THAT DEPONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

STATE ON DEPONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF EACH OF THE FOLLOWING NAMED DEFENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

DEPOSITING SAME ENCLOSED IN POSTPAID PROPERLY ADDRESSED WRAPPER(S), IN -A POST OFFICE- OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW YORK STATE.

SWORN TO BEFORE ME ON

X CITY OF NEW YORK  
Realty,

PLAINTIFF(S) INDEX NO. 89896/08  
-AGAINST- AFFIDAVIT OF  
DEFENDANT(S) MAILING OF ADDITIONAL  
NOTICE OF SUIT

STATE OF NEW YORK)  
COUNTY OF WESTCHESTER) SS:

GARY KAVULICH, ESQ., BEING DULY SWORN HEREBY DEPOSES AND SAYS:

I AM THE ATTORNEY FOR THE PLAINTIFF(S) HEREIN.

THE ABOVE ENTITLED ACTION IS AGAINST A NATURAL PERSON AND IS BASED  
UPON NON PAYMENT OF A CONTRACTUAL OBLIGATION.

ON 11/7/2008, I MAILED A COPY OF THE SUMMONS AND COMPLAINT IN THE ABOVE ENTITLED ACTION BY DEPOSITING  
THE ENVELOPE(S) IN AN OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE U.S. POSTAL  
SERVICE WITHIN NEW YORK STATE. SAID MAILING WAS BY FIRST CLASS MAIL IN A POSTPAID ENVELOPE(S), PROPERLY  
ADDRESSED TO THE DEFENDANT(S), THE ENVELOPE(S) BORE THE LEGEND  
"PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE(S) THAT THE  
COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT. AT DEFENDANT(S):

X LAST KNOWN ADDRESS AT: Abdou Gaye: 825 E. 170th Street Apt. 4B Bronx, NY 10459-1331

-----PLACE OF EMPLOYMENT AT:

THE ENVELOPE BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE  
WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE THAT THE  
COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT.

-----A KNOWN ADDRESS OF THE DEFENDANT AT:

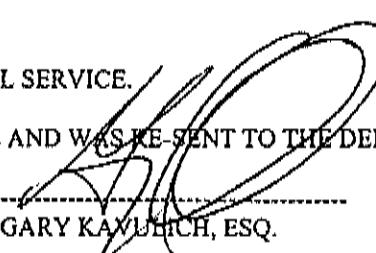
HIS ADDRESS IS NOT THE RESIDENCE OR PLACE OF EMPLOYMENT OF THE DEFENDANT.

THE AFOREMENTIONED MAILING:

X HAS NOT BEEN RETURNED UNDELIVERABLE BY POSTAL SERVICE.

-----WAS RETURNED UNDELIVERABLE BY POSTAL SERVICE AND WAS RE-SENT TO THE DEFENDANT AT:

WORN TO BEFORE ME  
IN THIS DAY OF  
*January, 2009*  
*Abdou Gaye*

  
GARY KAVULICH, ESQ.

Matthew N. Kaufman  
Notary Public - State of New York  
No: 02KA6204092  
Qualified in Westchester County  
By Commission Expires - April 13, 2013

CITY OF NEW YORK

pect Realty,

PLAINTIFF,

INDEX NO:  
FILE NO: 3860

-AGAINST-

Gaye,

DEFENDANT(S)

AFFIRMATION OF FACTS  
CONSTITUTING THE  
AMOUNT DUE

X

Hyser Mehmet

hereby deposes and says under the penalties of perjury, ss:

that deponent is the managing agent of 1343-45 Prospect Realty, Plaintiff in the within action; this action was commenced by substituted service of the summons and complaint upon defendant(s) and is an action for each of a lease agreement in the amount of \$2900.00 for the months of

September, 2002 through and including December, 2002 at the agreed monthly rental amount of \$25.00 per month; (after application of security and after application of payments) no part having been paid, although duly demanded. All other causes of action are hereby waived and disposed of. After a complete and thorough investigation, as I have been informed by Plaintiff's counsel, the defendant(s) are found not to be in the military and reside(s) in the City of New York. Rent was not paid by any other source. I make this affirmation upon personal Knowledge.

WHEREFORE, Plaintiff demands judgment against defendant for \$2900.00 with interest from August 1, 2002 together with costs and disbursements of the action.

ated: 9/4/2008

worn to before me

1 this /day of Dec., 2008

Frank Buglione

FRANK G. BUGLIONE  
Notary Public, State of New York  
No. 02BNU071950

Commissioned in Westchester County  
Commission Expires January 21, 2003

Hyser Mehmet  
Hyser Mehmet

ary Public

OF THE CITY OF NEW YORK  
BRONX

X  
rospect Realty,

Index No. 89896/08  
File No. 3860

Plaintiff,

-against-

Abdou Gaye

**AFFIDAVIT OF  
INVESTIGATOR**

Defendant(s).

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER )SS.:  
                       )

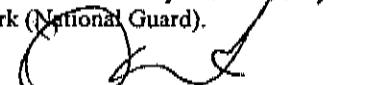
I am over 18 years of age, am not a party to this action and reside in Westchester County, State of New York.

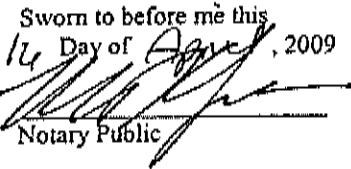
I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make an investigation to ascertain if the Defendant(s) Abdou Gaye is at the present time in military service for the purpose of entry of judgment.

On April 16, 2009, I Denise Miranda, contacted the Defense manpower Date Center concerning the Defendant Abdou Gaye military status.

I inputted the social security number, as provided by the Defendant, into the Defense Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not currently in the military service of the United States and the State of New York (National Guard).

  
Denise Miranda

Sworn to before me this  
14 Day of April, 2009  
  
Notary Public

Matthew N. Kaufman  
Notary Public - State of New York  
No: 02KA6204092  
Qualified in Westchester County  
My Commission Expires - April 13, 2013

Military Status .

Page 1 of 1

of Defense Manpower Data Center

APR-16-2009 11:41:36

## Military Status Report

Pursuant to the Servicemembers Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
GAYE	ABDOU		Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.	

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary M. Snavely-Dixon, Director  
 Department of Defense - Manpower Data Center  
 1600 Wilson Blvd., Suite 400  
 Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. §§ 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenselink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person ( e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

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See: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>

**WARNING:** This certificate was provided based on a name and Social Security number (SSN) provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:FIWNBTIWPZ

Civil Court of the City of New York  
 County of Bronx  
 Part

1343-45 Prospect Realty

Claimant(s)/Plaintiff(s)/Petitioner(s)  
 against

Andrew Gaye,  
 Defendant(s)/Respondent(s)

Index Number 89896-08  
 Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

### DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers  
 considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to VACATE

INCOME EXECUTIONS, IS ADJOURNED ~~as follows:~~

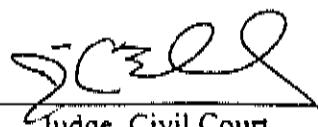
This motion is adjourned to 12-17-2013 for plaintiff to submit a supplemental affidavit or affirmation w/  
 the original leasing documents on 1343 Prospect Ave.

Defendant does not challenge the judgment but claims it  
 is against his cousin who has the same cause as him  
 and that the income executive should be lifted.

Civil Court of the City of New York
NOV 14 2013
ENTERED BRONX COUNTY

11-15-2013

Date

  
 Judge, Civil Court

HON. DAVID B. COHEN Page 25

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 34

INDEX NO. 89896/08  
FILE NO. 3860

X

1343-45 PROSPECT REALTY,

Plaintiff,

-against-

AFFIRMATION IN  
OPPOSITION

ABDOU GAYE,

Defendant.

X

GARY KAVULICH, ESQ., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

1. I am a member of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.

2. I make this affirmation in opposition to the Defendants ABDOU GAYE's Order to Show Cause which seeks to vacate the judgment in this matter and all income executions against her and restore this matter to this Court's calendar. Please see Defendant's instant Order to Show Cause annexed hereto as Exhibit "1."

STATEMENT OF THE UNDISPUTED FACTS

3. The within proceeding was commenced by the Plaintiff against the Defendant based upon a breach of a lease agreement for the premises known as 1343 Prospect Avenue, Apt. I, Bronx, NY 10459. Annexed hereto as Exhibit "2" is an affidavit of the Plaintiff's agent, Hysen Mehmetaj.

4. The Lease Agreement was for a term of one (1) year commencing May 1, 2002 and terminating on April 30, 2003. Please see aforementioned Exhibit "2."

5. Thereafter, Defendant defaulted on his rent payments pursuant to Defendant's agreement with Plaintiff and allowed a balance to accrue. Annexed hereto as Exhibit "3" is a copy of the tenant ledger.

6. Upon information and belief, on or about November 3, 2002, the Defendant vacated the subject-premises. Please see aforementioned Exhibit "2."

7. Thereafter, Plaintiff re-entered and re-rented the premises on February 1, 2003.

8. At the time of Defendant's vacatur, Defendant owed Plaintiff for rental arrears in the sum \$2,900.00 representing the months of September, 2002 through and including December, 2002 at the agreed monthly sum of \$725.00. Please see aforementioned Exhibit "2." Please see aforementioned Exhibit "3."

9. Plaintiff commenced this instant action against Defendant on or about October 16, 2008. Please see the summons and complaint in this matter annexed hereto as Exhibit "4." Please see the corresponding affidavit of service annexed hereto as Exhibit "5."

10. Thereafter, the Defendant failed to interpose an answer to said summons and complaint.

11. As such, the Plaintiff obtained a default judgment in the amount of \$4,769.77 that was entered on April 30, 2009. Please see a copy of said judgment annexed hereto as Exhibit "6."

12. Plaintiff then commenced execution measures pursuant to that judgment and on or about June 14, 2013, it caused New York City Marshal Stephen Biegel to serve a Income Execution upon Defendant Abdou Gaye's place of employment.

13. Thereafter, on July 23, 2013, the Defendant called your Affirmant's office offering to settle this matter for \$1,500.00. Annexed hereto as Exhibit "7" is the affidavit of Colin Kingsidaphone, affirmant's employee.

14. Thereafter, the Defendant Abdou Gate filed an Order to Show Cause seeking to vacate the Judgment, which was scheduled for October 10, 2013. Please see aforementioned Exhibit “1.”

15. On October 10, 2013, the matter was adjourned to November 14, 2013.

16. Plaintiff now opposes Defendant's motion.

THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERITORIOUS DEFENSE, THEREFORE THE MOTION SHOULD BE DENIED

17. In order to prevail on this instant motion, the Defendant must prove both an excusable default *and* meritorious defense as upon showing of both of those prongs, vacating a default judgment is proper. CPLR 5051(a)(1); *Bank of Am. v. Faracco*, 89 AD3d 879 [2d Dep't 2011]; *Community Preserve. Corp. v. Bridgewater condominiums, LLC.*, 89 AD3d 784 [2d Dep't 2011].

18. Moreover, should the Defendant demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default judgment when the Defendant's papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported legal conclusions. *Thapt v. Lutheran Med. Ct.*, 89 AD3d 837 [2d Dep't 2011]; *Garal Wholesalers, Ltd. v. Raven Brands, Inc.*, 82 AD3d 1041 [2d Dep't 2011].

19. It is respectfully stated to the Court that the Defendant has failed to demonstrate both prongs and that this motion must be denied.

20. In the Defendants' affidavit presently before this Court, the Defendant's defense is as follows:

a. “I am not the party.”

21. Plaintiff will now address each of those assertions in turn.

22. Defendant's allegation that he is not the Defendant is incorrect.

23. Defendant, when signing the legally binding lease agreement, signed in his individual capacity the legally binding lease agreement with the Plaintiff over the subject premises. Please see aforementioned Exhibit "2."

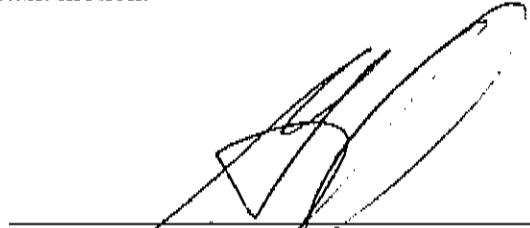
24. Moreover, after receiving notification that his wages were being garnished, Defendant called your Affirmant's office and made a lump sum offer of \$1,500.00 to settle this matter. Please see aforementioned Exhibit "7."

25. Therefore, the Defendant fails to meet the standard allowing this Court to vacate a default judgment as set forth in CPLR 5051(a)(1).

26. As the Defendant fails to set forth an excusable default and a meritorious claim, and the Plaintiff continues to suffer from the unsatisfied debt, the Plaintiff respectfully requests this Court to deny the Defendant's motion to vacate said judgment.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: October 22, 2013  
Port Chester, NY



---

Kavulich & Associates, P.C.  
By: Gary M. Kavulich, Esq.  
Attorney for Plaintiff  
181 Westchester Ave., Suite 500C  
Port Chester, NY 1057  
(914) 355-2074

**EXHIBIT 1**

## Appearances are Mandatory

44773

Civil Court of the City of New York  
County of Bronx Part 39

Index Number: CV-088896-08/BX

1343-45 PROSPECT REALTY  
-against-  
ABDOU GAYE

## ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

UPON the annexed affidavit of ABDOU GAYE, sworn to on September 30, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court

851 Grand Concourse

Bronx, New York 10451

Part 34 Room 503

on 10/10 at 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made:

3860

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s):  
(Judge to Initial)

Sheriff or Marshal:  
(Judge to Initial)

by Personal Service by "In Hand Delivery"

by Personal Service by "In Hand Delivery"

by Certified Mail, Return Receipt Requested

by Certified Mail, Return Receipt Requested

by First Class Mail with official Post Office

by First Class Mail with official Post Office

Certificate of Mailing

Certificate of Mailing

on or before 10/1/13, shall be deemed good and sufficient:

✓

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

## Mail to Attorney or party:

Gary Michael Kavulich (Counsel for Plaintiff),  
181 Westchester Avenue, Suite 500C,  
Port Chester, New York 10573

## Sheriff/Marshal:

NYC Marshal  
Biegel, Stephen, Marshal  
109 W 38 Street  
Suite 200  
New York, NY 10018-3615

September 30, 2013

DATE

Hon. Joseph E. Capella, Civil Court Judge (NYC)

Civil Court of the City of New York, County of Bronx

1343-45 PROSPECT REALTY  
-against-  
ABDOU GAYE

Index # CV-089896-08/BX

Affidavit in support of an order to show cause to  
restore case to the calendar, vacate any judgment,  
liens and income executions on this defendant on  
this Index number,  
allow proposed answer or dismissing the action

State of New York, County of New York:

ABDOU GAYE, being duly sworn, deposes and says:

(Defendant's initials)

1. G A a) I am the Party named as (Defendant)(Respondent) in the above titled action  I AM NOT A PARTY2. G A a) I have been served with a summons and complaint in this action. [NOTE: If Small Claims skip #3, and go to #4] b) I have not been served, and my first notice of legal action was [NOTE: If you complete any of #2b,  
skip #3, #4, #5, and go to #6] a Notice of Default Judgment mailed to me a Restraining Notice on my bank account.A T G  a copy of an Income Execution served on ~~1343-45~~ I AM NOT  
 Other: \_\_\_\_\_3. G A a) I did not appear and answer in the Clerk's Office because; [NOTE: If you complete # 3a, skip and go to #6]. b) I did not appear and answer in the Clerk's Office and I received a date for trial. but the answer was entered late. Other: DRIVERS LICENSE IN MY SOCIAL SECURITY

4. On the Date of Trial before Judge/Arbitrator

 a stipulation(a written agreement) was made between claimant/plaintiff and defendant. a judgment was entered after the trial. a judgment was entered against me by default for my failure to appear. Other: \_\_\_\_\_

5. My reason for not

G A complying with the stipulation is NGE 6/12G A following the order of the Court is \_\_\_\_\_ appearing in court on the date scheduled for trial is \_\_\_\_\_ Other: \_\_\_\_\_6. I allege that I have a good defense because: I HAVE MY INCOME COPY7. G A a) I have not had a previous Order to Show Cause regarding this index number.G A b) I have had a previous Order to Show Cause regarding this index number but I am making this application  
because: ACG8.  I request that the Judgment be vacated, that the case be restored to the calendar, that the answer be deemed  
timely filed and permission to serve these papers in person.

Sworn to before me this day September 30, 2013

  
 Signature of Court Employee and Title

(Sign Name) Abdou Gaye  
 ABDOU GAYE  
 825 E. 170TH STREET  
 APT. 4B  
 BRONX, New York 10459

## **EXHIBIT 2**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----X

INDEX NO. 89896/08  
FILE NO. 3860

1343-45 PROSPECT REALTY,

Plaintiff,

-against-

AFFIDAVIT IN  
OPPOSITION

ABDOU GAY,

Defendant.

-----X

STATE OF NEW YORK )  
                       )  
                       ) SS:  
COUNTY OF WESTCHESTER )

I, Hysen Mehmetaj, being duly sworn deposes and says:

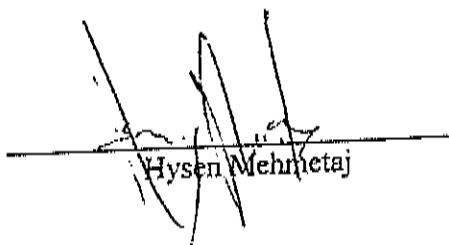
1. I am the agent for the Plaintiff, 1343-45 Prospect Realty, and as such I am fully familiar with the facts and circumstances of this proceeding.
2. The Plaintiff entered into a lease agreement with the Defendant, Abdou Gay with the Plaintiff for the premises known as 1343 Prospect Avenue, Apt. 1, Bronx, NY 10459.
3. The Lease Agreement was for a term of one (1) year commencing May 1, 2002 and terminating on April 30, 2003.
4. Thereafter, Defendant defaulted on his rent payments pursuant to Defendant's agreement with Plaintiff and allowed a balance to accrue.
5. Upon information and belief, on or about November 3, 2002, the Defendant vacated the subject-premises.
6. Thereafter, Plaintiff re-entered and re-rented the premises on February 1, 2003.
7. Therefore, the Defendant owes the Plaintiff for rental arrears in the sum \$2,900.00 representing the months of September, 2002 through and including December, 2002 at the agreed monthly sum of \$725.00.
8. Plaintiff then commenced this instant action against the Defendant to recover the arrears which Defendant has accumulated.
9. Thereafter, the Defendant failed to interpose an answer to said summons and complaint.

10. As such, the Plaintiff obtained a default judgment in the amount of \$4,769.77 that was entered on April 30, 2009.
11. Therefore, the Defendants currently owe the Plaintiff \$4,769.77 plus interest from April 30, 2009.
12. As of this date, despite repeated demands, the Defendant has failed to pay this balance.
13. My attorneys have advised me that the Defendant has filed an Order to Show Cause which seeks to vacate the judgment and restore this matter to the calendar.

WHEREFORE, your deponent prays that the Court deny the instant motion as no legal or equitable basis has been provided.

Sworn to before me this  
23<sup>rd</sup> day of October, 2013

Notary Public



Hysen Mehmetaj

GARY KAVULICH Notary Public, State of New York No. 02KA6205615 Qualified in Westchester County Commission Expires May 11, 2017
--

**EXHIBIT 3**

05/23/2008 Property Code: 1343

Page 1

*RR 2/03  
sec to 1/03  
add 12/02 to breakdown*

Unit: 01  
Tenant: ABDOU GAYE  
Selected: 01/18/2002 - 11/01/2002

MOVED-OUT OPEN BALANCE REPORT  
1343-46 PROSPECT REALTY CORP  
647 E. 168th Street  
Bronx, NY 10456

*be 5/1/02-  
4/30/03  
Move out 11/3/02*

Date	Opening Bal	Base Rent	Mthly Chgs	Check#/Description	Receipts	Chg/Crd	Bal Due	Mthly Diff
								-643.47
01/18/2002	350.00	0.00	0.00	CASH	350.00	0.00	0.00	360.00
02/01/2002	0.00	920.57	-195.57	Monthly Billing	0.00	0.00	725.00	-725.00
03/01/2002	725.00	920.57	-195.57	Monthly Billing	0.00	0.00	1450.00	-725.00
03/08/2002	1450.00	0.00	0.00	CASH	725.00	0.00	725.00	725.00
04/01/2002	725.00	920.57	-195.57	Monthly Billing	0.00	0.00	1450.00	-725.00
04/12/2002	1450.00	0.00	0.00	CASH	725.00	0.00	725.00	725.00
05/01/2002	725.00	920.57	-195.57	Monthly Billing	0.00	0.00	1450.00	-725.00
05/17/2002	1450.00	0.00	0.00	CASH	1000.00	0.00	450.00	1000.00
06/01/2002	450.00	920.57	-195.57	Monthly Billing	0.00	0.00	1175.00	-725.00
06/21/2002	1175.00	0.00	0.00	cash	750.00	0.00	425.00	750.00
07/01/2002	425.00	920.57	-195.57	Monthly Billing	0.00	0.00	1150.00	-725.00
07/26/2002	1150.00	0.00	0.00	CASH	740.00	0.00	410.00	740.00
08/01/2002	410.00	920.57	-195.57	Monthly Billing	0.00	0.00	1135.00	-725.00
08/23/2002	1135.00	0.00	0.00	CASH	750.00	0.00	385.00	750.00
08/31/2002	385.00	920.57	-195.57	Monthly Billing	0.00	0.00	1110.00	-725.00
10/01/2002	1110.00	920.57	-195.57	Monthly Billing	0.00	0.00	1835.00	-725.00
11/01/2002	1835.00	920.57	-195.57	Monthly Billing	0.00	0.00	2560.00	-725.00

## **EXHIBIT 4**

CONSUMER CREDIT TRANSACTION. THIS IS AN ATTEMPT TO COLLECT A DEBT  
AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT.  
CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----x  
1343-45 Prospect Realty,  
Plaintiff,

INDEX NO.  
FILE NO. 3860

-against-

Abdou Gaye,

Defendant(s)

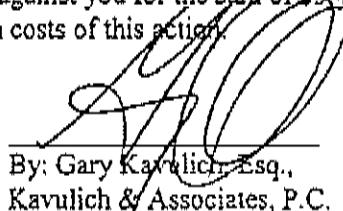
SUMMONS  
Place of Venue is Plaintiff's  
place of business:

1343 Prospect Avenue  
Bronx, NY 10459

-----x  
To the above named defendant(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF  
NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand  
Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the  
time provided by law as noted below and to file an answer to the below complaint with the  
clerk: upon your failure to answer, judgment will be taken against you for the sum of \$3,400.00  
with interest thereon from September 1, 2002 together with costs of this action.

DATED: September 10, 2008

  
By: Gary Kavulich, Esq.,  
Kavulich & Associates, P.C.  
Attorney for Plaintiff  
30 Church Street  
Suite 26  
New Rochelle, NY 10801  
(914) 355-2074

Defendant's Address:

Abdou Gaye  
825 E. 170th Street, Apt. 4B  
Bronx, NY 10459-1331

Note: The law provides that: (a) If the summons is served by its delivery to you personally  
within the City of New York, you must appear and answer within TWENTY days after such  
service; or (b) If the summons is served by any means other than personal delivery to you  
within the City of New York, you must appear and answer within THIRTY days after proof of  
service thereof is filed with the Clerk of this Court.

COMPLAINT

**FIRST ACTION:** Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$2,900.00 representing rental arrears for the months of September, 2002 through and including December, 2002 at the agreed monthly sum of \$725.00 for the premises known as 1343 Prospect Avenue, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

**SECOND ACTION:** Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

**THIRD ACTION:** Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

**WHEREFORE,** Plaintiff demands judgment (A) on the First Action, in the sum of \$2,900.00 plus interest from September 1, 2002 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of 0.000 plus interest from September 1, 2002 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

AFFIDAVIT OF SERVICE  
CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

Index No. 89896/08  
Filed: \_\_\_\_\_

Attorneys: Kavulich & Associates, P.C.  
Address: 30 Church Street, Suite 26, New Rochelle, NY 10801 File No. 3860

1343-45 PROSPECT REALTY,  
vs.  
ABDOU GAYE,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On October 18, 2008 at 12:40p.m.  
At: 825 E. 170<sup>th</sup> Street, Apt. 4B, Bronx, NY 10459 served the within Summons and Complaint  
on: ABDOU GAYE, Defendant therin named

Individual  By delivering a true copy of each to said recipient: deponent knew the person  
 served to be the person described as said person therein.

Corporation  By delivering to and leaving with \_\_\_\_\_ and that deponent knew the  
 person so served and authorized to accept service on behalf of the Corporation

Suitable Age  By delivering a true copy of each to a person of suitable age and discretion  
Person  Said premises is recipients [ ] actual place of business  dwelling house within the  
 state.

Affixing  By affixing a true copy of each to the door of said premises, which is recipients  
to Door  [ ] actual place of business  dwelling house (place of abode) within the state

Mail Copy  On October 20, 2008 deponent completed service under the last two sections by  
depositing a copy of the Summons and Complaint to the above address in a 1"  
Class properly addressed envelope marked "Personal and Confidential" in an official  
depository under the exclusive care and custody of the United States Post Office in the State  
of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age  
and discretion having called thereat:

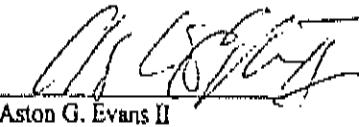
On the day of  
On the day of  
On the day of

Description A description of the Defendant, or other person served on behalf of the Defendant  
 Sex:  Color of skin: BLK Color of Hair: BRN Age: 45-50 Height: 5'5" Weight: 155LBS

Military Svce  Deponent asked person spoken to whether the recipient was presently in military  
 service of the United States Government or of the State of New York and was  
informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other  "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 20 day of 10/08

  
Aston G. Evans II  
LIC# 1220069

I, J. L. S. J.,  
County of Bronx,  
State of New York,  
do solemnly declare,  
that I have read the foregoing affidavit,  
and that it is true to the best of my knowledge and belief.

Given under my hand and seal of the County of Bronx, this 20th day of October, 2008.

## **EXHIBIT 6**

Bronx County Civil Court  
Civil Judgment

Index Number: CV-089896-08/BX

Y

Judgment issued: On Default

On Motion of:

Kavulich, Gary Michael  
30 Church St Ste 26, New Rochelle, NY  
10801-

\$2,900.00	Cost By Statute	\$20.00	Transcript Fee	\$0.00
\$0.00	Index Number Fee	\$45.00	County Clerk Fee	\$0.00
\$0.00	Service Fee	\$25.00	Enforcement Fee	\$40.00
\$1,739.77	Non Military	\$0.00	Other Disbursements	\$0.00
\$0.00	Notice of Trial	\$0.00	Other Costs	\$0.00
	Jury Demand	\$0.00		
<b>9.77 Total Costs &amp; Disbursements</b>		<b>\$130.00</b>	<b>Judgment Total</b>	<b>\$4,769.77</b>

Addressed and identified as creditors below:

.TY  
RONX, NY 10459-

Parties, addresses and identified as debtors below:

IS

IB, BRONX, NY 10459-

: County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK  
7 on 04/30/2009 at 04:30 PM.

Jack Baer, Chief Clerk Civil Court

## **EXHIBIT 7**

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF BRONX

X

1343-45 PROSPECT REALTY,

INDEX NO. 8986/08

FILE NO. 3860

Plaintiff,

AFFIDAVIT IN  
OPPOSITION

- against -

ABDOU GAYE,

Defendant.

X

STATE OF NEW YORK )  
                        )  
                        )SS  
COUNTY OF WESTCHESTER )

I, Colin Kingsidaphone, being duly sworn deposes and says:

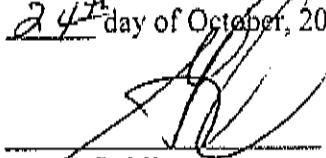
1. I am a employee for your Affirmant, and as such I am fully familiar with the facts and circumstances of this proceeding.
2. On or about July 23, 2013, I received a phone call from Defendant Abdou Gaye.
3. During that conversation, Defendant offered a settlement offer of \$1,500.00 to be paid in an lump sum payment.
4. In response, I informed Defendant that before the offer would be accepted it needed to be authorized by the Plaintiff.

WHEREFORE, your deponent prays that the relief sought herein is granted in all respects and for such other and further relief as to this court may seem just and proper.

Sworn to before me this  
24<sup>th</sup> day of October, 2013



Colin Kingsidaphone

  
Notary Public

GARY KAVULICH Notary Public, State of New York No. 02KA6205615 Qualified in Westchester County Commission Expires May 11, 2017
--

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 34

X

Index No. 89896/08  
File No. 3860

1343-45 PROSPECT REALTY,

Plaintiff,

-against-

AFFIRMATION OF  
SERVICE

ABDOU GAYE,

Defendant.

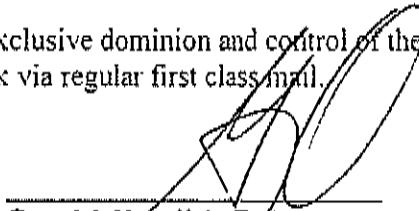
X

Gary M. Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On October 4, 2013, I served the within Affirmation in Opposition upon ABDOU GAYE, the Defendant in this action, by depositing a true copy in a post-paid envelope addressed to:

ABDOU GAYE  
825 East 170<sup>th</sup> Street, Apt. 4B  
Bronx, NY 10459

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class mail.

  
Gary M. Kavulich, Esq.

INDEX NO: 89896/08

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 34

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1343-45 PROSPECT REALTY,

Plaintiff,

- against -

ABDOU GAYE,

Defendant.

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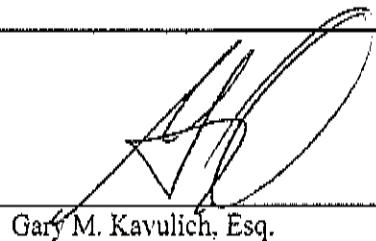
AFFIRMATION IN OPPOSITION

---

Signature Rule 130-1.1-a

---

Print Name Beneath -



Gary M. Kavulich, Esq.

---

Kavulich & Associates, P.C.  
Attorneys for Plaintiff  
181 Westchester Ave., Suite 500C  
Port Chester, NY 10573  
(914) 355-2074

**AFFIDAVIT OF SERVICE**  
**CIVIL COURT OF THE CITY OF NEW YORK**  
**COUNTY OF BRONX**

Index No. 89896/08  
 Filed: \_\_\_\_\_

Attorneys: Kavulich & Associates, P.C.  
 Address: 30 Church Street, Suite 26, New Rochelle, NY 10801 File No. 3860

1343-45 PROSPECT REALTY,

vs.

ABDOU GAYE,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On October 18, 2008 at 12:40 p.m.  
At: 825 E. 170<sup>th</sup> Street, Apt. 4B, Bronx, NY 10459 served the within Summons and Complaint  
 on: ABDOU GAYE, Defendant therin named

Individual  By delivering a true copy of each to said recipient: deponent knew the person  
 served to be the person described as said person therein.

Corporation  By delivering to and leaving with \_\_\_\_\_ and that deponent knew the  
 person so served and authorized to accept service on behalf of the Corporation

Suitable Age Person  By delivering a true copy of each to a person of suitable age and discretion  
 Said premises is recipients  actual place of business  dwelling house within the  
 state.

Affixing to Door  By affixing a true copy of each to the door of said premises, which is recipients  
 actual place of business  dwelling house (place of abode) within the state

Mail Copy  On October 20, 2008 deponent completed service under the last two sections by  
 depositing a copy of the Summons and Complaint to the above address in a 1<sup>st</sup>  
 Class properly addressed envelope marked "Personal and Confidential" in an official  
 depository under the exclusive care and custody of the United States Post Office in the State  
 of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age  
 and discretion having called thereat:

On the    day of    at  
 On the    day of    at  
 On the    day of    at

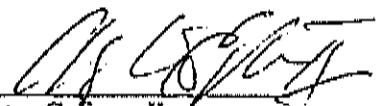
Description A description of the Defendant, or other person served on behalf of the Defendant  
 Sex: F Color of skin: BLK Color of Hair: BRN Age: 45-50 Height: 5'5" Weight: 155LBS

Military Svce  Deponent asked person spoken to whether the recipient was presently in military  
 service of the United States Government or of the State of New York and was  
 informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other

"Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 20 day of 10/08

  
 Aston G. Evans II  
 LIC# 1220069

New York State Notary Public

County of Bronx

City/Municipality

Sub. No. 01911-A6042816

Commission Expires June 5, 2010

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

Index No. 89896/08  
Filed: \_\_\_\_\_

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801 File No. 3860

1343-45 PROSPECT REALTY,

vs.

ABDOU GAYE,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

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At: 825 E. 170<sup>th</sup> Street, Apt. 4B, Bronx, NY 10459 served the within Summons and Complaint on: ABDOU GAYE, Defendant therin named

Individual By delivering a true copy of each to said recipient: deponent knew the person  
 served to be the person described as said person therein.

Corporation By delivering to and leaving with \_\_\_\_\_ and that deponent knew the  
 person so served and authorized to accept service on behalf of the Corporation

Suitable Age By delivering a true copy of each to a person of suitable age and discretion  
Person Said premises is recipients  actual place of business  dwelling house within the  
 state.

Affixing By affixing a true copy of each to the door of said premises, which is recipients  
to Door  actual place of business  dwelling house (place of abode) within the state

Mail Copy On October 20, 2008 deponent completed service under the last two sections by  
 depositing a copy of the Summons and Complaint to the above address in a 1<sup>st</sup>  
Class properly addressed envelope marked "Personal and Confidential" in an official  
depository under the exclusive care and custody of the United States Post Office in the State  
of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age  
and discretion having called thereat:

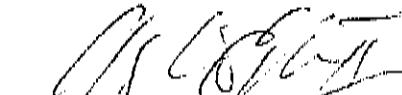
On the    day of    at  
On the    day of    at  
On the    day of    at

Description A description of the Defendant, or other person served on behalf of the Defendant  
 Sex: F Color of skin: BLK Color of Hair: BRN Age: 45-50 Height: 5'5" Weight: 155LBS

Military Svce Deponent asked person spoken to whether the recipient was presently in military  
 service of the United States Government or of the State of New York and was  
informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other  
 "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 20 day of 10/08

  
Aston G. Evans II

LIC# 1220069

New York State Notary Public

County of Bronx

Cheryll Mark

Lic. # 019H-A6042816

Commission Expires June 3, 2010

CONSUMER CREDIT TRANSACTION. THIS IS AN ATTEMPT TO COLLECT A DEBT  
AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT.  
CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----x  
1343-45 Prospect Realty,  
Plaintiff,

INDEX NO. **089896**  
FILE NO. 3860

-against-

Abdou Gaye,

Defendant(s)

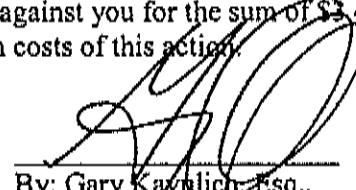
SUMMONS  
Place of Venue is Plaintiff's  
place of business:

1343 Prospect Avenue  
Bronx, NY 10459

-----x  
To the above named defendant(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$3,400.00 with interest thereon from September 1, 2002 together with costs of this action.

DATED: September 10, 2008

  
By: Gary Kavulich, Esq.,  
Kavulich & Associates, P.C.  
Attorney for Plaintiff  
30 Church Street  
Suite 26  
New Rochelle, NY 10801  
(914) 355-2074

Defendant's Address:

Abdou Gaye  
825 E. 170th Street, Apt. 4B  
Bronx, NY 10459-1331

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

**FIRST ACTION:** Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$2,900.00 representing rental arrears for the months of September, 2002 through and including December, 2002 at the agreed monthly sum of \$725.00 for the premises known as 1343 Prospect Avenue, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

**SECOND ACTION:** Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

**THIRD ACTION:** Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

**WHEREFORE,** Plaintiff demands judgment (A) on the First Action, in the sum of \$2,900.00 plus interest from September 1, 2002 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$0.00 plus interest from September 1, 2002 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

TRANSAACION DE CREDITO DEL CONSUMIDOR IMPORTANTE!! UD. HA SIDO DEMANDADO! ESTE ES UN DOCUMENTO LEGAL-UNA CITACION! NO LA BOTE!! CONSULTE CON SU ABOGADO ENSEGUITA! LE PUEDEN QUITAR PARTE DE SU SALARIO (EMBARGARLO). ISI UD. NO SE PRESENTA EN LA CORTE CON ESTA CITACION LE PUEDEN CONFISCAR SUS BIENES (PROPIEDAD) Y PERJUDICAR SU CREDITO!! TAMBIEN ES POSIBLE QUE TENGA QUE PAGAR TODOS LOS GASTOS LEGALES (COSTOS)! SI UD. NO TIENE DINERO PARA UN ABOGADO TRAIGA ESTOS PAPELES A LA CORTE IMMEDIATAMENTE. VENGA EN PERSONA Y EL SECRETARIO LA CORTE LE AYUDARA.

COURTE CIVIL DE LA CUIDAD DE NUEVA YORK,

Condado de Bronx

Indice #

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Claim # 3860

1343-45 Prospect Realty,

Demandante,

CITATION

La razon de haber designado

Esta Corte es:

-contra-

1343 Prospect Avenue  
Bronx, NY 10459

Abdou Gaye,

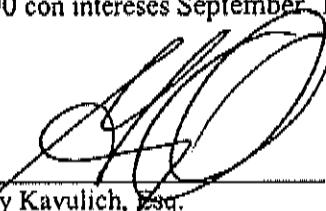
Demandado(s).

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Al demandado arriba mencionado:

USTED ESTA CITADO a comparecer en la Corte Civil de la Ciudad de Nueva York, Condado de Bronx a la oficina del Jefe Principal de dicha Corte en 851 Grand Concourse, Bronx, NY 10451, in the COURTE CIVIL DE LA CUIDAD DE NUEVA YORK, NY en el Condado de Nueva York Ciudad y Estado de Bronx, dentro del tiempo provisto por la ley segun abajo indicado y presentar respuesta a la Demanda ajunta al Jefe de la Corte, si usted no comparece a contestar, se dictara juicio en contra suya en la suma de \$3,400.00 con intereses September 1, 2002, incluyendo los costos de esta causa.

Fechado: September 10, 2008

  
By: Gary Kavulich, Esq.  
Kavulich & Associates, P.C.  
30 Church Street, Suite 26  
New Rochelle, NY 10801  
914-355-2074

Defendant's Address

Abdou Gaye

825 E. 170th Street Apt. 4B

Bronx, NY, 10459-1331

Nota: La ley provee que: (a) Si esta citacion es entregada a usted personalmente en la Ciudad de Nueva York, usted debe comparecer y responder dentro de Viente dias despues de la entrega, (b) Si esta citacion es entregada a otra persona que no fuera usted personalmente, o si fuera entregada afuera de la Ciudad de Nueva York, o por medio de publicacion, o por otros medios que no fueran entrega personal a usted en la Ciudad de Nueva York, usted tiene Treinta dias para comparecer y responder la demanda, despues de haberse presentado prueba de entrega de a citacion al Jefe de esta Corte.

COMPLAINT

**PRIMERA ACCIÓN:** el Demandante procura recuperar daños del demandado (s) para la violación de un acuerdo de arriendo en la suma de \$2,900.00 dólares que representan atrasos de alquiler para los meses del equilibrio dólares; September, 2002 a través de e incluso December, 2002 en la suma mensual concordada de \$725.00 local conocido como 1343 Prospect Avenue #1 Bronx, NY 10459 juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional como el tribunal puede juzgar sólo.

**SEGUNDA ACCIÓN:** el Demandante procura recuperar daños del demandado en la suma de \$ 0 dólares que representan daños juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional cuando el Tribunal puede juzgar sólo.

**TERCERA ACCIÓN:** el Demandante procura recuperar daños del demandado en la suma de \$ 500.00 dólares que representan honorarios de abogados razonables juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional cuando el Tribunal puede juzgar sólo.

**POR QUE,** el Demandante exige el juicio (A) en la Primera Acción, en la suma de \$2,900.00 Dólares más el interés a partir del September 1, 2002 juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional cuando el Tribunal puede juzgar sólo, (B) en la Segunda Acción, en la suma de \$0 dólares más el interés el 1 de September 1, 2002 juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional como el Tribunal pueden juzgar sólo, (C) en la Tercera Acción, en la suma de \$500.00 dólares más el interés el juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional cuando el Tribunal puede juzgar solo.

El Demandante en Esta Accion no esta obligado a ser licenciado por el Departamento de asuntos de Consumidor de la Ciudad de Nueva York.

-08  
005896  
CV

Civil Court of the City of New York

✓ ✓ ✓

Comments	Notes
3/12/14 Trial	
4/14/14 Trial (No interpreter needed as I choices the card for an interpreter)	
4/14/14 Dis/C	

THE GREEKS

**WARNING:** A person who has been drinking alcohol or taking drugs should not drive a vehicle.